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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,980	10/13/2000	Nickolai Alexandrov	2750-1237p	3742

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EXAMINER

ZITOMER, STEPHANIE W

ART UNIT PAPER NUMBER

1634

DATE MAILED: 05/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/689,980

Applicant(s)

ALEXANDROV ET AL.

Examiner

Zitomer, Stephanie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-50 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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RESTRICTION

Group restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1(a), 2, 3 and 5-24, drawn to nucleic acid, vector and host cell, classified in class 536, subclass 23.1 et al.;
 - II. Claims 1(b) and 6-24, drawn to a nucleic acid that is patentably distinct from the nucleic acid of claim 1(a), vector and host cell, classified in class 536, subclass 23.1;
 - III. Claim 4, drawn to a nucleic acid that is patentably distinct from the nucleic acids of groups I and II, classified in class 536, subclass 23.1;
 - IV. Claims 25-28, drawn to a polypeptide, classified in class 530, subclass 300;
 - V. Claim 29, drawn to an antibody, classified in class 530, subclass 387.1;
 - VI. Claims 30-37, drawn to a method of transforming a host cell, classified in class 435, subclass 468;
 - VII. Claim 38, drawn to a method of modulating transcription, classified in class 435, subclass 69.1;
 - VIII. Claims 39-40, drawn to nucleic acid assay, classified in class 435, subclass 6;
 - IX. Claims 41-50, drawn to a plant or plant cell, classified in class 435, subclass 419.

Sequence restriction

2. Each of groups I-IX above encompasses multiple patentably distinct inventions defined by structurally unrelated nucleotide sequences. Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq..
3. The polynucleotide and polypeptide products of groups I-IV and IX can be shown to be distinct, each from the other. Although the polynucleotides and polypeptides are related as the claimed polypeptide is asserted to be encoded by the claimed nucleic acid molecule,

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they are distinct inventions in that they are physically and functionally distinct chemical compounds. The polypeptide product can be made by another and materially different process without use of the nucleic acid, for example, by chemical synthesis or purification from a natural source. The antibody of group V and the polypeptide products of group IV are structurally and functionally distinct from one another and from the polynucleotides of groups I-III and IX.

4. The methods of groups VI-VIII can be shown to be distinct each from the other as they have different starting materials, different method steps, different operating modes and different results. These methods can be shown to be distinct from the products of groups I-IV and IX as each of the products either is not used in the group I-IV and IX methods or has uses unrelated to the methods. For example, the polynucleotides can be used as probes or to make the polypeptides, the polypeptides can be used to make antibodies and the antibodies can be used in methods of purification.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications and the sequence and literature searches required for the different groups are not coextensive restriction for examination purposes as indicated is proper.

6. **Applicant is required to elect one of groups I-IX and one searchable nucleotide sequence identified by SEQ ID NO: to which prosecution of the elected claims will be restricted. This is not an election of species.** Note: If group I is elected, both (a) and (b) in claims 3 and 5 will be examined based on the sequence relationship between a nucleic acid and its complement. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Contact information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie Zitomer whose telephone number is (703) 308-3985. The examiner can normally be reached on Monday through Friday from 9:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones, can be reached on (703) 308-1152. The official fax phone

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number for this Group is (703) 308-4242. The unofficial fax number is (703) 308-8724. The examiner's Rightfax number is 703-746-3148.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196. For questions and requests relating to formal matters contact Patent Analyst Tiffany Tabb at 703-605-1238.

S. Zitomer

Stephanie Zitomer, Ph.D.
May 7, 2002

Patent Analyst